REMARKS/ARGUMENTS

In the Office Action dated November 13, 2008, claims 9, 25, and 28 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 1-28 have been rejected under 35 U.S.C. §§ 101 and 103(a).

Applicants respectfully traverse these rejections.

I. Rejections of claims 9, 25, and 28 under 35 U.S.C. § 112

Claims 9, 25, and 28 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Applicants respectfully traverse this rejection.

Claim 9 was rejected as including the term "and/or." This claim has been amended to replace "and/or" with "or."

The phrase "the lowest bid for the group of lowest unique bids" of claim 25 was rejected as being indefinite. This phrase has been amended to read: "the lowest bid of the group of lowest unique bids." (*See, e.g.,* Specification, page 6, lines 19-22, and page 29, line 28 through page 30, line 10.)

Claim 28 has been canceled.

In view of the foregoing, withdrawal of this rejection is respectfully requested.

II. Rejections of claims 1-28 under 35 U.S.C. § 101

Claims 1-28 have been rejected under 35 U.S.C. §101. More specifically, the Office Action indicates that claims 1-28 are directed to nonstatutory subject matter. Applicants respectfully traverse this rejection.

Claims 27-28 have been canceled. Claim 1-26 have amended to comprise (either by direct amendment or through dependency on another claim) a system, comprising:

> at least a first data processing device and a memory in communication with the data processing device, the memory storing instructions executable by the processor to: . . .

(See, e.g., claims 1 and 26.) In view of these amendments, Applicants respectfully submit that the pending claims clearly comprise patentable subject matter (*i.e.*, a machine) under 35 U.S.C. § 101.

III. Rejection of claims 1-10 under 35 U.S.C. §103(a)

Claims 1-10 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Publication No. 2004/0059663 A1 to Herzog et al. (hereinafter "Herzog") in view of United States Patent Publication No. 2004/0058694 to Mendiola (hereinafter "Mendiola"). Applicants respectfully traverse the rejection.

The factual inquiries that are relevant in the determination of obviousness are determining the scope and contents of the prior art, ascertaining the differences between the prior art and the claims at issue, resolving the level of ordinary skill in the art, and evaluating evidence of secondary consideration. KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 2007 U.S. LEXIS 4745, at **4-5 (2007) (citing Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18 (1966)). As the Board of Patent Appeals and Interferences has recently confirmed, "obviousness requires a suggestion of all limitations in a claim." In re Wada and Murphy, Appeal 2007-3733 (citing CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003)). Moreover, the analysis in support of an obviousness rejection "should be made explicit." KSR, 2007 U.S. LEXIS 4745, at **37. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." Id. (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Furthermore, teaching away from an applicant's invention demonstrates a lack of *prima facie* obviousness. McGinley v. Franklin Sports, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001); *In re Fine*, 837 F.2d, 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). A reference teaches away from a claimed invention when the reference leads its reader "in a direction divergent from the path that was taken by the applicant." Tec Air, Inc. v. Denso Mfg. Mich. Inc., 52 USPQ2d 1294, 1298 (Fed. Cir. 1999).

Herzog discloses method comprising: "offering a product or service to one or more prospective buyers at a maximum price which is below a market price; receiving offers to buy the product from the one or more prospective buyers; and accepting the offer with is correlated to the maximum price." (Herzog, claim 1; emphasis added.) Also, in Herzog, "the highest unique offer which is the same or below the maximum price" is accepted. (Herzog, claim 2.)

Herzog does not disclose or suggest instructions that are executable to "determine a bidder associated with a lowest unique bid for the lot, wherein, at a close of the auction, the lowest unique bid is a winning bid in the auction for the purchase of the lot," as required by claim 1.[1] Indeed, Herzog teaches away from encouraging low bids at paragraph [0008]. In this paragraph, in the context of a conventional reverse auction, Herzog states that "[i]f a large number of prospective buyers continue to state prices which are unrealistically low, the Reverse Auction organizer and the vendors are likely to spend a considerable amount of time engaging in futile activities." (Herzog, paragraph [0008].) By determining the winner with the highest unique bid at or below a maximum price, Herzog seeks to avoid the "logistic burden" placed on an auction system by a large number of low bids. (Herzog, paragraph [0008].) Thus, Herzog does not teach or suggest "determin[ing] a bidder associated with a lowest unique bid for the lot" or "wherein, at a close of the auction, the lowest unique bid is a winning bid in the auction for the purchase of the lot," as required by claim 1.

As noted above, in one embodiment of Herzog, the winner is determined by selection of an offer that is correlated to a "maximum price" of the service or product being auctioned. (*e.g.,* Herzog, Abstract and claim 8.) This in no way discloses or suggests "determin[ing] . . . a lowest unique bid" or that "at a close of the auction, the lowest unique bid is a winning bid in the auction for the purchase of the lot" (as required by claim 1), particularly since the lowest unique bid has no correlation to the "maximum price." Accordingly, this embodiment of Herzog also teaches away from the claimed subject matter.

Applicants also submit that Herzog teaches away from "determin[ing] . . . a lowest unique bid" or that "at a close of the auction, the lowest unique bid is a winning bid in the auction for the purchase of the lot" because Herzog teaches acceptance of "the highest unique offer which is the same or below the maximum price." (*See, e.g.,* Herzog, claim 2; emphasis added). Thus, a skilled artisan would not look to or rely on Herzog when attempting to implement the claimed subject matter. Indeed, embodiments of Herzog appear to teach variations upon a "reserve price" (in which the highest bid is accepted only if it is above "the lowest acceptable price," described at page 1, lines 6-13 of the specification of the present

[1] Support for the language of claim 1 added by amendment is provided, for example, at Figure 1A, box 16, and at page 16, lines 2-6 of the specification.

application) or a Dutch auction ("in which several like lots are sold at once to the highest bidder," as described at page 1, lines 15-16 of the specification of the present application). As such, Applicants submit that it is not appropriate to combine Herzog with any form of a lowest-bidder-wins system to achieve the claimed subject matter.

The Examiner has also bases the rejection upon the reverse auction method described page 1, lines 17-20 of the specification of the present application. (Office Action, page. 12.) In such auctions, a potential buyer invites bids from multiple prospective sellers. Typically, the lowest bid from a seller is then accepted. There is no disclosure or suggestion that a reverse auction would involve "at a close of the auction, [that] the lowest unique bid is a winning bid in the auction for [a] purchase of [a] lot," as recited in claim 1. (Emphasis added.) Accordingly, this embodiment of a reverse auction does not disclose or suggest the features of the claimed subject matter.

The Examiner also references Mendiola in the rejections. Mendiola describes a messaging system for wireless clients that may be used to facilitate the transfer of information such as information concerning a bid in an auction. (Mendiola, paragraph [0064].) Mendiola does not disclose or suggest "determin[ing] a bidder associated with a lowest unique bid for the lot" or that "at a close of the auction, the lowest unique bid is a winning bid in the auction for the purchase of the lot," as required by claim 1. As such, a combination of Mendiola and Herzog does not teach or suggest all the features the claimed subject matter.

Applicants thus respectfully submit that the subject matter of claim 1 is not taught or suggested by the cited references. In fact, as noted above, Applicants respectfully submit that the cited references teach away from the claimed subject matter, in which "at a close of the auction, the lowest unique bid is a winning bid in the auction for the purchase of [a] lot."

Accordingly, Applicants respectfully request withdrawal of the rejection of claim 1.

Claims 2-10 depend directly or indirectly from claim 1. Accordingly, Applicants further submit that claims 2-10 are allowable for at least the reasons identified above.

IV. Rejection of claims 11-13, 15-16, and 18-28 under 35 U.S.C. §103(a)

Claims 11-13, 15-16, and 18-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Herzog in view of Mendiola and in further view of M2 Presswire "Link77:

Link77 introduces reverse charge SMS billing service for ringtones and logos" (hereinafter "Link77") published December 18, 2001. Applicants respectfully traverse this rejection.

The standard for nonobviousness has been set forth above.

Claim 26 requires "wherein, at a close of the auction, a lowest unique bid is a winning bid in the auction for the purchase of the lot." As explained above, neither Herzog nor Mendiola teach or suggest this subject matter. Likewise, Link77 relates "to reverse charge SMS billing service for ringtones and logos" and thus does not teach or suggest the identified subject matter. (Link77, page 1.) Thus, Applicants respectfully request the withdrawal of the rejection of claim 26.

Claims 11 and 27-28 have been canceled. Claims 12-13, 15-16, and 18-25 depend directly or directly from claim 26. As a result, Applicants respectfully submit that claims 12-13, 15-16, and 18-25 are allowable at least for the reasons provided above.

V. Rejection of claim 14 under 35 U.S.C. §103(a)

Claim 14 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Herzog in view of Mendiola and in further view of Link77 and in further view of European Patent Application No. EP 1 220 126 A1 to Abeshouse et al. (hereinafter "Abeshouse"). Applicants respectfully traverse this rejection.

The standard for nonobivousness has been set forth above.

Claim 14 depends directly from claim 26. Accordingly, Applicants submit that claim 14 is allowable for at least the reasons provided above in connection with claim 26.

VI. Rejection of claim 17 under 35 U.S.C. §103(a)

Claim 17 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Herzog in view of Mendiola and in further view of Link77 and in further view of Hong Kong's Tender, published June 2000 (hereinafter "Tender").

Claim 17 depends indirectly from claim 26. Accordingly, Applicants submit that claim 17 is allowable for at least the reasons provided above in connection with claim 26.

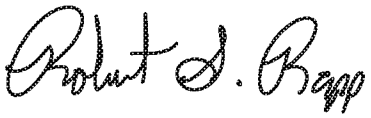
VII. New Claims

Claim 29 and 30 have been added. These claims depend from claims from 1 and 26, respectively. Accordingly, claims 29 and 30 are allowable for at least the reasons provided above.

VIII. Conclusion

Applicants respectfully request that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,



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